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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DISPATCHED BY

FCC 95-265

In the Matter of)
)
Amendment of Section 73.606(b),) MM Docket No. 94-143
Table of Allotments,)
Television Broadcast Stations.)
(Albion, Nebraska))

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: June 26, 1995;

Released: June 27, 1995

By the Commission:

1. The Commission has before it the Application for Review filed by Busse Broadcasting Corporation (Busse Broadcasting") directed to the Report and Order in this proceeding which allotted television Channel 24 to Albion, Nebraska, 10 FCC Rcd 3183 (1995). Citadel Communications Co., Inc. ("Citadel Communications") filed an Opposition to the Application for Review. For the reasons discussed below, we deny the Application for Review.

Background

2. Citadel Communications is the licensee of television Station KCAN, Channel 8, Albion, Nebraska.¹ In a separate proceeding in MM Docket No. 91-304, the staff substituted UHF Channel 18 for VHF Channel 8 at Albion, allotted VHF Channel 8 to Lincoln, and modified the Citadel Communications Station KCAN license to specify Lincoln as the community of license.² That action was specifically conditioned on the pledge of Citadel

¹Citadel Communications operates Station KCAN as a satellite of commonly owned television Station KCAU, Channel 9, Sioux City, Iowa. Station KCAU is an ABC Network affiliate.

²Albion, Lincoln and Columbus, Nebraska, 8 FCC Rcd 2876 (1993). Busse Broadcasting has also filed a Petition for Reconsideration directed against that action. We deny that Petition for Reconsideration in a separate Memorandum Opinion and Order adopted in conjunction with our Order here. See Memorandum Opinion and Order in MM Docket No. 91-304 (Albion, Lincoln and Columbus, Nebraska), FCC 95-266, adopted June 26, 1995.

Communications to file an application for Channel 18 in Albion and operate it as a satellite of Station KCAU and thereby maintain the availability of ABC Network service in Albion.

3. Pursuant to this pledge, Citadel Communications filed an application for Channel 18 in Albion (File No. BPCT-930726KH). However, Fant Broadcasting of Nebraska, Inc. filed a competing application for the Channel 18 allotment in Albion proposing a full-service facility (File No. BPCT-931115KF). Because of developments related to our comparative licensing procedures, the staff was unable to designate these applications for a comparative hearing or otherwise resolve these mutually exclusive applications. See Bechtel v. Federal Communications Commission, 10 F3d 875 (D.C.Cir. 1993). In order to facilitate a resolution of this impasse, the staff issued the Notice of Proposed Rule Making in this proceeding, 9 FCC Rcd 7315 (1994), proposing to add Channel 24 at Albion, Nebraska and permitted Citadel Communications to amend its pending application for Channel 18 to specify operation on Channel 24.

4. In response to the Notice, Busse Broadcasting, licensee of Station KOLN-TV, Channel 10, Lincoln, Nebraska, filed comments in opposition to the proposed addition of Channel 24 to Albion. In its comments, Busse argued that there was "no demonstrated demand for additional television service" and that an additional television channel to a community of 1,380 persons in a county of 6,607 persons "makes no economic sense." Busse Broadcasting also referred to our ongoing proceeding to convert the existing NTSC television transmission system to a Digital Television System. In view of the anticipated demand for additional television spectrum, Busse Broadcasting concluded that allotting Channel 24 to Albion would be a "needless squandering of scarce broadcast spectrum." The Report and Order rejected these arguments.

Application for Review

5. In support of its Application for Review, Busse Broadcasting first notes the pendency of its Petition for Reconsideration directed to the action in Albion, Lincoln and Columbus, Nebraska, supra, in which the staff substituted Channel 18 for Channel 8 at Albion, and allotted Channel 8 to Lincoln. In this regard, Busse Broadcasting argues that since the Channel 18 allotment at Albion is still subject to review by the Commission, its arguments in that proceeding "must be transferred to the instant proceeding and considered in this context as well." Busse Broadcasting also argues that the allotment of Channel 24 to Albion failed to impose a condition, as had the Channel 18 allotment Order, 8 FCC Rcd at 2878, that Citadel Communications provide an ABC Network service. Further, Busse Broadcasting again sets forth its argument that the allotment of Channel 24 to Albion will adversely affect the conversion to a Digital Television System and contends that the staff's "summary" decision rejecting this argument was an "unsupported conclusory statement." In addition, Busse Broadcasting requests that we

take "cognizance of the obvious and undisputed fact that Albion cannot support two television stations." Finally, Busse Broadcasting states that Channel 24 should not have been allotted for the sole purpose of accommodating the mutually exclusive application of Citadel Communications. According to Busse Broadcasting, use of additional "scarce spectrum" is not the normal mechanism to resolve mutually exclusive applications. None of these arguments is persuasive. We will discuss each argument seriatim.³

Discussion

6. At the outset, we endorse the staff's conclusion in the in the Report and Order in this proceeding that:

[T]he public interest would be served by permitting Citadel Communications to amend its pending application for Channel 18 at Albion to specify operation on Channel 24+ without loss of cut-off protection. This action will resolve the conflict between two mutually exclusive applications and permit the prompt institution of additional service to Albion as well as facilitate the service gains which prompted [the] approval of the original proposal to allot Channel 8 to Lincoln.

10 FCC Rcd at 3183 (footnote omitted). The clear public interest benefits identified by the staff in this passage as the basis for its decision to allot Channel 24+ to Albion remain unrebutted by Busse Broadcasting. Moreover, Busse Broadcasting's claim that competing adverse effects from this decision outweigh these benefits is simply unconvincing.

7. First, Busse Broadcasting's repetitious contentions that allotting Channel 24+ to Albion "makes no economic sense" and undermines our interest in preserving spectrum for use in connection with implementing a new digital television were fully

³In its Opposition, Citadel Communications contends that Busse Broadcasting does not have standing to file this Application for Review. We disagree. In order for Citadel Communications to commence a Channel 8 operation in Lincoln, it must also commence operation in Albion with a replacement television satellite service. As correctly noted by Citadel Communications in its Opposition, this proceeding is therefore "inextricably intertwined" with Albion, Lincoln and Columbus, Nebraska, which allotted Channel 8 to Lincoln. Inasmuch as Busse Broadcasting's Station KOLN-TV will compete with Citadel Communications' Channel 8 facility in Lincoln, Busse Broadcasting does have standing to file this Application for Review. Federal Communications Commission v. Sanders Brothers Radio Station, 309 U.S. 470 (1940).

and persuasively addressed by the staff in the Report and Order and need not be reexamined here. 10 FCC Rcd at 1083-84.

8. Second, Busse Broadcasting's contention that the arguments contained in its Petition for Reconsideration directed to Albion, Lincoln and Columbus, Nebraska "must be transferred" to this proceeding is moot in light of our decision in Memorandum Opinion and Order in MM Docket No. 91-304 (Albion, Lincoln and Columbus, Nebraska), FCC 95-266, adopted June 26, 1995. There is no reason to again consider the arguments set forth in that Petition and disposed of in our separate decision.

9. Third, Busse Broadcasting's suggestion that the Report and Order in this proceeding somehow relieved Citadel Communications of its obligation to provide an equivalent ABC Network service to Albion is without merit. The Report and Order in MM Docket No. 91-304, which allotted Channel 18 to Albion and modified Citadel Communications' license to specify operation on Channel 8 at Lincoln, expressly stated that authorization for Citadel Communications to operate the modified facilities "would not be granted until a construction permit has been issued for Channel 18 (or an equivalent channel) at Albion, Nebraska, and equivalent replacement of ABC network service has been initiated on that channel." 8 FCC Rcd at 2879 (emphasis added). By its terms, the condition extends to an "equivalent channel," such as Channel 24, not just to Channel 18. The staff action allotting Channel 24 to Albion merely provided the "equivalent channel" which the original Report and Order anticipated might be necessary. It did not, in any way, relieve Citadel Communications of its continuing obligation to provide an equivalent ABC Network service to Albion.

10. Accordingly, IT IS ORDERED, That the aforementioned Application for Review filed by Busse Broadcasting Corporation IS DENIED.

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 776-1654.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
William F. Caton
Acting Secretary